



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,746	01/16/2004	Ester Fernandez-Salas	17355CIP4 (BOT)	6885

51957 7590 01/25/2008

ALLERGAN, INC.
2525 DUPONT DRIVE, T2-7H
IRVINE, CA 92612-1599

EXAMINER

ART UNIT	PAPER NUMBER
----------	--------------

DATE MAILED: 01/25/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/759,746	Applicant(s) FERNANDEZ-SALAS ET AL.	
	Examiner Chang-Yu Wang	Art Unit 1649	

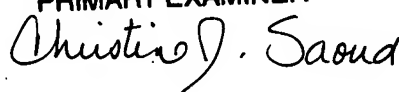
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 09 November 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and **relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

**CHRISTINE J. SAOUD
PRIMARY EXAMINER**


/CYW/

Continuation of 10. Other (including any explanation in support of the above items):

The brief contains other evidence not entered by the examiner. All references listed in IX. EVIDENCE APPENDIX in the brief were not entered or considered by the examiner before. A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. In addition, reference to unentered evidence is not permitted in the brief. See MPEP 1205.02-(ix) & 1206 and also see 37 CFR § 41.37-c-(1)-(ix), 41.37-c-(2) & 41.33 for treatment of evidence submitted after appeal.

3. The IDS submitted on 11/06/06 is not entered because it constitutes new evidence. See MPEP 609.04-(b)-III & 37CFR 1.197 for proper submission of IDS after final.

4. improper to reference publications that are listed in IX. EVIDENCE APPENDIX (see p. 2 of the brief) because the listed publications have never previously been made of record. In addition, the brief requires a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters and/or must set forth the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters. For example, the description that references different publications on pages 2-3 of the brief in the summary of the claimed subject matter is not concise. Note that use of paragraph # is also inappropriate. See MPEP 1205.02-(v) & 37 CFR 41.37-c-(1)-(v).

NOTE that the notice of appeal was filed on June 29, 2007. Therefore, no extension of time under 37CFR1.136 will be granted after January 29, 2008.

/CYW/
1/14/08

**CHRISTINE J. SAUD
PRIMARY EXAMINER**

Christine J. Saud